General
Services
Administration
Washington, DC 20405

Date: SEP 27 1982

Reply to Attn of: Office of Policy Formulation (VP)

Subject: Multiple Award Schedule Procurement Policies

To: Assistant Administrator, Information Resources Management (K)
Assistant Administrator, Office of Personal Property (F)
Regional Administrators

The enclosed procurement policies are to be used in negotiating contracts for products and services under the multiple award schedule (MAS) program. Implementation of these policies begins with solicitations issued on or after October 1, 1982.

The policies in the enclosure are based on the analysis of comments submitted by your organizations, by business and industry representatives and other interested parties.

We ask that a copy of the enclosure be given to everyone directly involved in the negotiation of MAS contracts. Your contracting people must fully understand these policies to effectively implement them in the procurement process. To further this understanding, we have set up a teleconference for Tuesday, September 28, 1982, at 2 p.m. in the GSA auditorium. At that time, we will highlight the contents of the enclosure. Your MAS contracting people should plan to attend this session. Subsequently, the appropriate ADTS and FSS organizations will arrange and conduct training sessions, as needed, on the attached policies.

The enclosure is a significant step forward in achieving our goal of having a procurement method for purchasing the Government's commercial products and services requirements under the MAS program in a manner that is in the best interests of the American taxpayer. Effective implementation of these policies in the MAS procurement process by our contracting people will also further the achievement of this goal.

Gerald P. Carmen
Administrator

Enclosure

POLICY STATEMENT
ON
MULTIPLE AWARD SCHEDULE

GSA

October 1, 1982

X2

INDEX

CONTRACT PRICING ARRANGEMENTS

I. INTRODUCTION

II. MAS CONTRACT PRICING ARRANGEMENTS

III. DISCOUNT SCHEDULE AND MARKETING DATA

IV. OEMs AND DEALER/DISTRIBUTOR DISCOUNTS AND MARKETING DATA

V. QUANTITY AND AGGREGATE DISCOUNTS

VI. MAXIMUM ORDER LIMITATION (MOL)

VII. PRICE REDUCTIONS

VIII. ECONOMIC PRICE ADJUSTMENTS

ATTACHMENT - MULTIPLE AWARD SCHEDULE PRICING GUIDE

I. DISCOUNT SCHEDULE AND MARKETING DATA

II. PRENEGOTIATIONS

III. CATALOG ITEM VERIFICATION

IV. PRICE ANALYSIS

V. NEGOTIATIONS

CONTRACT PRICING ARRANGEMENTS

I. INTRODUCTION.

This policy statement addresses issues concerning the establishment and maintenance of pricing arrangements on multiple award schedule (MAS) contracts for supplies and services. These issues are the most complex of all the issues associated with the MAS program. Continued interest by Congress, General Accounting Office, this Agency's management, and business and industry, made it apparent that a number of problems exist with respect to negotiating pricing arrangements in MAS contracts. Except where otherwise stated, this policy statement applies to the ADTS and FSS MAS contracts.

The contract pricing policies in this document are those which appear to us to require special attention. None of these policies contravene existing Federal Procurement Regulations nor do they obviate the requirements of existing regulations that are not covered in this document.

In providing supply support to our customer agencies, GSA is responsible for determining the method of support. GSA will continue to emphasize the reduction of the number of items on MAS contracts and to increase the use of competitive procurement methods in providing supply support for items currently in the MAS program. While striving toward this goal, we will continue to use the MAS program, where appropriate, to support our customer agencies.

When GSA provides supply support through the MAS program, it acts as the contracting agent for all Government organizations authorized to use the MAS contracts. Our customer agencies, when they purchase items from the schedules, should be able to buy those items at prices that are better than they could obtain from any other source under similar circumstances. In its role as the contracting agent, GSA will attempt to obtain the best pricing arrangement, i.e., discount(s) from commercial price lists, giving full consideration to the Government's large volume of purchases, in the negotiation process.

II. MAS CONTRACT PRICING ARRANGEMENTS.

The Government's goal when negotiating MAS contract pricing arrangements is to obtain a discount from a firm's established catalog or commercial price list which is equal to or greater than the discount given to that firm's most favored customer. The most favored customer (MFC) discount is equal to the best discount given by a firm to any entity with which that firm conducts business, other than the original equipment manufacturers (OEM), or participating dealers, and distributor's discount.

Consideration may be given to awarding an MAS contract where the Government's discount is not equal to or greater than a firm's MFC discount. This recognizes that there are situations where the Government's terms and conditions may be different from those given the firm's most favored customer. Offerors may cite factors that they claim make the Government different from other customers with which they do business. In these situations, it is the offeror who must provide information identifying such factors, the valuation of the factors identified and the method used for developing the valuation. Contracting officers shall obtain information necessary to judge whether these factors and their valuation are reasonable.

Offerors and contracting officers should understand that there is no guarantee that every offeror who submits an offer will receive a contract. In the event that the Government's negotiation objective cannot be met, the contracting officer must exercise judgment in deciding whether to reject an offer. In exercising this judgment, the contracting officer must weigh the effect that the rejection of the offer will have on meeting the Government's needs.

GSA will not award an MAS contract to a firm that does not give the Government a price equal to the best price given or available to its large volume end user customers with comparable terms and conditions except where the Government's overall volume of purchases does not warrant the best price given to end user customers.

In all MAS contracts, the contracting officer is required to make an affirmative determination that the prices offered to the Government are fair and reasonable (FPR 1-3.807-2).

III. DISCOUNT SCHEDULE AND MARKETING DATA.

All MAS solicitations will require offerors to submit information on sales, discounts and marketing practices. The required information will be used to determine whether products or services offered meet the tests of commerciality and will be used by the Government in the evaluation of the offeror's proposal and the price reasonableness determination. The offeror will certify to the completeness, accuracy and currency of the data at the conclusion of negotiations. Failure to submit the required sales, discount and marketing data will result in no award. If the data is not found to be complete, current and accurate subsequent to award, the defective pricing clause will be activated and consideration will be given to cancelling the MAS contract if still in effect.

Before a catalog price exemption to the need for submission of cost or pricing data can be granted for products or service offered on MAS solicitations, the tests of commerciality must be met. (FPR 1-3.807-1). FPR 1-3.807-2(d) references ASPM No. 1 which contains the quantified criteria (located in ASPM No. 1, Chapter 8) for these tests and shall be used as the basis for the catalog price exemption.

Offerors will be able to certify to those products or services meeting these tests of commerciality in the discount schedule and marketing data sheets. Information will only be required on a representative sample of the best selling items. Data will be required on all other items offered under the solicitation that are not certified as commercial in accordance with the aforementioned criteria. Cost or pricing data shall be required where sales of a product or service to the general public do not exceed 35 percent of total sales of that product or service; or, where the price cannot be considered "based on" established catalog or market prices of commercial items sold in substantial quantities to the general public in accordance with FPR 1-3.807-1(b)(2)(iii).

Even though an item qualifies for an exemption from the submission of cost or pricing data, price analysis must be performed to determine the reasonableness of price and the need for further negotiations (FPR 1-3.807-1(b)(2)(iv)).

V. OEMs AND DEALER/DISTRIBUTOR DISCOUNTS AND MARKETING DATA.

Information on OEM and dealer/distributor discount or pricing arrangements will be obtained where the same or similar product or service is offered to the Government under the MAS contract.

Where an offeror markets through dealers or distributors, the contracting officer shall require the offeror to provide sufficient information on the functions or services performed and whether these functions or services will be performed under the MAS contract.

Where an offeror sells to OEMs and claims that there is considerable difference in physical or performance characteristics of the products or services sold to OEMs and the products or services offered to the Government, the offeror must provide sufficient information to substantiate such a claim in lieu of OEM discount or pricing data. Where the contracting officer determines that the offeror's claim is not substantiated, the offeror is required to furnish OEM discount or pricing information.

The contracting officer will use the OEM and dealer/distributor data in the price analysis that result in the Government's negotiation position.

QUANTITY AND AGGREGATE DISCOUNTS.

In establishing negotiation objectives and in the negotiation process, emphasis will be placed on obtaining discounts based on the aggregate volume of sales of an MAS contract. Negotiation objectives will be established to obtain volume discounts in line with the discounts available to the offeror's other customers. In developing negotiation objectives based on the aggregate volume of sales, consideration may be given to taking discounts on aggregate volume of sales at the conclusion of the contract period, although it is preferred that the discounts be obtained when orders are placed.

VI. MAXIMUM ORDER LIMITATION (MOL).

All MAS contracts will contain an MOL. The level at which the MOL is established will depend upon the Government's discount arrangement under the schedule and the estimate of sales volume above which suppliers are likely to quote lower prices in other types of contracts. The contracting officer will establish the MOL level for the contract at the conclusion of negotiations.

VII. PRICE REDUCTIONS.

All MAS contracts will contain the price reductions clause contained in this document. The price reductions clause is intended to maintain the relationship that was established at the time of award between the Government and the offeror's customer or category of customer upon which the MAS contract was predicated. Any changes in pricing practices by the contractor resulting in a less advantageous relationship between the Government and the customer or category of customer upon which the MAS contracts was predicated shall result in a price reduction to the Government to the extent necessary to retain the original relationship.

The following price reductions clause will be used in all MAS contracts:

PRICE REDUCTION CLAUSE 1/

a. General. This price reductions clause is intended to ensure that throughout the term of the contract, the Government shall maintain its relative price/discount [and/or term and condition] advantage in relation to the Contractor's commercial customer(s) price/discount upon which this contract award was predicated. The customer or category of customers upon which the contract award is predicated will be identified at the conclusion of negotiations.

1/ NOTE: Language in brackets apply to ADP/Communications/Teleprocessing Solicitations/Contracts Only.

b. Pricing Reductions to Customers Other than the Federal Agencies.

(1) Prior to the award of contract, the contracting officer and the offeror shall reach an agreement as to the price relationship between the Government and the offeror's identified customer or category of customers upon which the contract award is predicated. This relationship shall be maintained throughout the contract period. Any change in the contractor , commercial pricing arrangement for the identified customer or category of customers which disturbs this relationship will constitute a price reduction.

(2) The contractor shall report all price reductions made during the contract period to the contracting officer along with an explanation of the conditions under which the reductions were made. Those reductions which do not disturb the Government's price position relative to the contractor's identified customer or category of customers will not be subject to the provisions of this clause. However, the information will be used in conjunction with the negotiations for the following contract period.

(3) If, after the date of the conclusion of negotiations, the contractor (i) reduces the prices contained in the commercial catalog, pricelist, schedule, or other documents [or grants any more favorable terms and conditions] offered by the contractor and used by the Government to establish the prices with the contract; or (ii) reduces the prices through special discounts to the identified customer or category of customers upon which the award was predicated so as to disturb the relationship of the Government to that identified customer or category of customers, a price reduction shall apply to this contract for the remainder of the contract period, or until further reduced, or, in the case of temporary price reductions, for the duration of any temporary price reduction period.

(4) This clause will not apply to contractor's firm fixed price Definite Quantity contracts with specified delivery in excess of the Maximum Order Limitation specified in the contract.

(5) The contracting officer may exempt from the application of this clause any sale at a price below the contract price if caused by an error in quotation or billing, provided adequate documentation is furnished by the contractor immediately following the discovery of the error.

c. Price Reductions to Federal Agencies. [This paragraph does not apply to Non-Schedule ADP/ Communications/Teleprocessing Services contracts entered into with Federal Agencies.]

Except for temporary "Government-only" price reductions described below, if, after the effective date of this contract, the contractor reduces the price of any contract item to any Federal agency and the sale falls within the contract maximum order limitation, an equivalent price reduction shall apply to all subsequent sales of the contract item to Federal agencies for the duration of the contract period or until the price is further reduced. The contractor may offer to the contracting officer a temporary "Government-only" price reduction which has a duration of 30 calendar days or more, except during the last month of the contract period when any such offer must be for the remainder of the contract period.

d. Effective Dates and Notifications. [This paragraph does not apply to Non-Schedule ADP/ Communications/Teleprocessing Contracts entered into with Federal Agencies.]

(1) Any price reduction pursuant to b. above, shall be effective for the Government at the same time as the price reduction to the other customer. Any price reduction pursuant to c. above, shall be effective at the time of initial purchase in the Federal Agency (Government) at the reduced price, except in the case of a temporary "Government-only" price reduction which shall be effective at the time of acceptance by the contracting officer. The contractor shall invoice at such reduced price and indicate thereon that the price reduction is pursuant to this Price Reduction Clause until such time as this contract is modified.

(2) The contractor shall notify the contracting officer in writing of any price reduction as soon as possible but not later than 10 calendar days after the effective date. Failure to give timely notice shall require that such price reduction (including temporary price reductions) apply to the contract for the duration of the contract period, or until the price is further reduced, and may constitute a basis for termination of the contract as provided in the Default Clause of the contract.

e. Contractor's Statement of Price Reductions. (This paragraph does not apply to Non-Schedule ADP/Communications/-Teleprocessing Contracts entered into with Federal Agencies.)

The contractor shall furnish within 10 calendar days after the end of the contract period a statement certifying either (1) that there was no applicable reduction; or (2) that any price reduction was reported to the contracting officer. For each reported price reduction, the contractor shall show the date when the contracting officer was so notified.

VIII. ECONOMIC PRICE ADJUSTMENTS.

An economic price adjustment (EPA) clause will be used in FSS MAS contracts where uncertainty exists as to the stability of market prices during the term of the contract. The contracting officer will determine whether items under the MAS contract are subject to unforeseen price fluctuations, thus warranting the use of an EPA clause. The contracting officer's determination on the use of an EPA clause will be made in the negotiation process.

MULTIPLE AWARD SCHEDULE PRICING GUIDE

MULTIPLE AWARD SCHEDULE (MAS) PRICING GUIDE

I. DISCOUNT SCHEDULE AND MARKETING DATA.

A. REQUIREMENT FOR OFFEROR TO SUBMIT PRICING DATA. FPR 1-3.101(c) provides that proposals shall be supported by statements and analyses or other evidence of reasonable prices and by such information concerning other vital matters as is deemed necessary by the contracting officer. Each MAS solicitation will include Discount Schedule and Marketing Data sheets to be completed for each Special Item Number (SIN) and submitted as a part of the offerors proposal. When this form is completed in its entirety, along with pricing data from current or prior contracts and preaward audits, it should provide the necessary data, in most cases, to enable the contracting officer to complete the price analysis and develop the negotiation objective.

B. INITIAL REVIEW OF OFFERORS PROPOSAL. As soon as possible after receipt of proposals, the contracting officer should review in detail the offeror's submission in response to the Discount Schedule and Market Data Sheets. If the offer has failed to respond to specific data elements or if the response is not adequate, the contracting officer should immediately request that the offeror correct any deficiencies in the data submission. In this regard, a specific date for the receipt of the required data should be established with the offeror. Also, it is important that the data be received well in advance of schedule negotiations to permit adequate time for a price analysis by the contracting officer.

C. TIMELINESS OF THE PROCUREMENT ACTION. The process, to the extent practical, should begin early enough to allow for award of MAS contracts by the beginning of the proposed schedule period.

II. PRENEGOTIATIONS

A. Establishing the Negotiation Objective. In preparing for negotiations, the contracting officer will establish specific negotiation objectives based upon a properly prepared price analysis. This price analysis will serve as the basis for the negotiation objectives including the rationale for the objectives established. The elements of the price analysis are listed in Section IV of this pricing guide.

B. Negotiation Objective. In establishing negotiation objectives, contracting officers must remain cognizant of the Government's goal in negotiating MAS contracts, namely, to obtain discounts equal to or better than an offeror's discounts to its favored customer. The most favored customer discount is defined as the largest discount, other than the OEM or dealer/distributor discount given to any entity with which the offeror does business. There are factors, such as, terms and conditions, warranties and FOB point, that may make the Government different from a firm's other customers. Through proper analysis and documentation, the contracting officer may recognize such differences. However, in recognizing these differences, the contracting officer must also consider the volume purchased by the Government under the MAS contract.

C. Documentation of the Price Analysis and Negotiation Objective. The contract file will contain the written price analysis report in support of the Government's negotiation position.

The supporting documentation will necessarily vary depending upon the complexity and estimated dollar volume of the contract. The price analysis and negotiation objective will be a part of the price negotiation memorandum (See section V of this pricing guide). The supporting documentation required at this point in the procurement process will normally include:

1. General description of the procurement.
2. Adequacy of data submitted by the offeror.
3. The elements of pricing analyzed prepatory to establishing the negotiation objective. (See section IV of this pricing guide).
4. The negotiation objectives and the supporting rationale.
5. Major differences between the offeror's proposal and the negotiation objectives.
6. The offeror's documentation and rationale if less than the MFC discount is offered. This will also include the contracting officer's evaluation of that data.

D. APPROVAL OF NEGOTIATION OBJECTIVES. The negotiation objectives should be approved by the chief of the purchasing office or designee.

III. CATALOG ITEM VERIFICATION

A. DEFINITION OF ESTABLISHED CATALOG PRICE. FPR 1-3.807-1(b)(2) states that for an item to qualify as a catalog price, the price must be, or be based on, (A) an established catalog price, (B) of commercial items, (C) sold in substantial quantities, (D) to the general public. The criteria contained in the following paragraphs should be applied in determining whether an item falls within the scope of this definition.

B. ESTABLISHED CATALOG PRICE (FPR1-3.807-1(b)(2)(ii)(A)). This is a price that is included in a catalog, pricelist, schedule or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers and states prices at which sales are currently or were last made to a significant number of buyers who constitute the general public. The following questions will help you determine if there is an established catalog price.

1. Is there a printed catalog, pricelist, published price or other formal document showing prices and applicable discounts, if any?

2. Can audit validate from seller's records that the price offered is a regular catalog price with appropriate discounts?

3. If the answer to either (1) or (2) above is not "yes" the proposal does not meet the test of a catalog priced item.

C. COMMERCIAL ITEM (FPR 1-3.807-1(b)(2)(ii)(B)). This is an item (the term includes both supplies and services) of a class or kind that is regularly used for other than Government purposes and is sold or traded in the course of normal business operations. The following questions will help you determine if the item is a commercial item.

1. Is the item or service identical to that described in the catalog?

2. Is the item or service so similar it can be priced by reference to catalog prices?

3. Is the item or service so similar that differences can be identified and priced as add-ons or deducts from catalog prices by price analysis or other known prices?

4. If the answer to either (1), (2) or (3) above is not "yes", the proposal does not meet the test of a catalog item.

D. GENERAL PUBLIC (FPR 1-3.807-1(b)(2)(ii)(D)). An item is sold "to the general public" if it is sold to other than affiliates of the seller and to nongovernment entities. Items sold to affiliates of the seller and sales for end use by the government are not sales to the general public. The following questions will help you determine if an item is sold to the general public.

1. Does the seller's data show sales over the appropriate past period as between Government and nongovernment entities?

2. Is there general knowledge of large public sales of products regularly stocked by dealers or regularly traded in the marketplace?

3. Can audit validate from the seller's records that sales have been made to nongovernment entities?

4. If you did not answer "yes" to any of the preceeding checklist items, the proposal does not meet the test of a catalog item.

E. SUBSTANTIAL QUANTITIES (FPR 1-3.807-1(b)(2)(ii)(C)). Supplies are sold in substantial quantities when the facts or circumstances are sufficient to support a reasonable conclusion that the quantities regularly sold are sufficient to constitute a real commercial market for the item. This test is usually in terms of total quantities sold, but it also should include the number of times the item has been sold and how many times a given price or price structure has been accepted by buyers free to choose. Nominal quantities, like models, specimens, samples and prototype or experimental units do not meet this requirement. Services sold in substantial quantities are those that are customarily provided by the company, with personnel regularly employed and with equipment regularly maintained solely or principally to provide such services. In order to provide more detailed guidance to contracting officers, and to ensure that the policy is carried out in a more uniform manner among all contractors, GSA has adopted the ASPM No. 1 criteria as set forth in Chapter 8A. Also, the sales data requested in section VII of the Discount Schedule and Marketing Data is set forth in a format to facilitate your analysis of this requirement. The following questions will help you determine if the items have been sold in substantial quantities:

1. Are reported sales to nongovernment entities at least 55% of total sales and those at catalog price less applicable discounts at least 75% of this amount? When the answer to this question is "yes" the item meets the "substantial quantity" test.

2. Are reported sales to nongovernment entities at least 35% of total sales and those at catalog price less applicable discounts at least 55% of this amount? When the answer to this question is "yes" the test of substantial may be deemed to have been met when (i) the criteria in B, C, and D above are met, (ii) the nature of the item or total quantities sold clearly supports such a conclusion even though the Government is the major user, and (iii) approval of the chief or deputy chief of the Procurement Office is obtained.

3. Can audit verify from the seller's records that commercial sales meet the test of (1) and (2) above?

4. Are reported sales to nongovernment entities less than 35% of total sales to all customers (government and nongovernment)? If the answer is "yes" the item does not meet the test of substantial quantities. Therefore, if the item is to be included in the MAS, cost or pricing data must be obtained and evaluated in accordance with FPR 1-3.807.

F. CATALOG PRICE EXEMPTION. A catalog price exemption to the need for submission of cost or pricing data can be granted for products or services offered on MAS solicitations when the requirements set forth in paragraphs A through E above have been met.

The Discount Schedule and Marketing Data Sheets provides in section VII for the information to determine commerciality. This section permits offerors to certify to the commerciality of items offered under the solicitation. Along with this certification, offerors are required to submit sales information on a representative sample of the best selling items under the SIN. The contracting officer will establish the representative sample size in the solicitation. For items that the offeror cannot certify as commercial, sales information will be required for each item offered under the solicitation. The information provided will be used in determining whether an item should be exempt from the cost and pricing data requirement.

IV. PRICE ANALYSIS

A. REQUIREMENT FOR PRICE ANALYSIS. FPR 1-3.807-2(a) states that some form of price or cost analysis should be made in connection with every negotiated procurement action. FPR 1-3.807-1(b)(2)(iv) states that even though an item qualifies for exemption from the requirements for submission of certified cost or pricing data, price analysis must be performed to determined the reasonableness of the price and the need for further negotiation.

B. PREPARATION FOR NEGOTIATIONS. Preparation for negotiations after receipt of the offer begins with a properly prepared price analysis report. The price analysis should provide the basis for establishing the specific negotiation objectives and the reasons why these objectives were established.

C. PRICE ANALYSIS TECHNIQUES. Most of the data needed to perform the price analysis will be submitted by the offerors as required by the Discount Schedule and Marketing Data Sheets and the historical files on existing or prior contracts. Questions on the proposal that arise during the price analysis effort will be addressed to the offeror. The price analysis may include the following elements, as appropriate:

1. Discount arrangements on the existing or prior year contract. Data from these sources can be accumulated prior to receipt of proposals. Information should include: estimated and actual sales volume; categories of customers and discount arrangements; the MAS discounts negotiated; and, any problems or significant events that were experienced during the negotiations affecting the Governmen' negotiation position. Price reduction information submitted in accordance with the price reduct clause shall also be included. This information is the data base from which to start the price analysis a.. proposals are received.

2. Offeror's commercial sales data. The sales data submitted in Part B, VII of the Discount Schedule and Marketing Data Sheets will be used to determine price reasonableness, the commerciality of products or services offered and the discount the Government should receive. As a general rule, the larger the percent of commercial sales to total sales, the more reliance the Government can place on prices being set in the marketplace Because products or services available under schedules should be for the most part commercial items, it is essential that the commerciality of the products or services be established prepatory to negotiations. Where products or services do not clearly meet the tests of commerciality, contract negotiators are required to analyze whether these products or services are comparable to others which meet the tests of commerciality or there are other circumstances that can be used in judgir why such items sho..d be considered commercial. Additional information may be required from th. offeror in assessing commerciality. Where products or services are not commercial costs or pricing data is required.

3. The prices and discounts proposed by the offeror. The offeror's proposal should be reviewed to ascertain an understanding of the prices or discounts offered to the Government as compared with offeror's discounts to other entities and to determine if the sales data required is included in the proposal. The analysis of the proposal should determine the reasons for differences between the offered discounts, and other discount arrangements; whether there are special discount arrangements; or other concessions that the offeror makes which should be included in determining the Government's negotiation position.

4. Net price evaluation. Comparison of net prices may be utilized in the evaluation of offers under MAS contracts. Every effort should be made to include products with the lowest net price on the schedule even though there may be instances where the offeror offering the lowest net price may not offer the most favored customer pricing. In addition, you may compare the net prices offered by one offeror with net prices of similar items offered by other offerors to assist in the price reasonableness determination. This may be done on a sampling basis using the high dollar volume items listed on the Discount Schedule and Marketing Data Sheets.

5. Recommendations contained in preaward audits or from other pricing specialists or from other appropriate sources.

6. Trend analysis of price changes using appropriate indices such as the Producer Price Index, other similar market indicators, and price changes in similar products offered by other companies.

7. The comparison of offered prices/discounts to local retail and discount house catalog prices.

8. The overall discount policy of the offeror. The Discount Schedule and Marketing Data sheets require that complete disclosure regarding discount policy and price reductions in any other form be made. This would include, but not limited to, such things as quantity discounts, end-of-year discounts, discounts for multiple quantities, free service or installation, training, bonus goods of any kind, trade-in allowances, rebates of any kind, F.O.B. point, payment terms, incentives, guaranteed prices. The price analysis should determine whether any such items are included in the offeror's proposal to the Government and the consideration that they should be given in establishing the Government's negotiation position.

9. That the offeror's price to the Government takes into account the volume of Government business anticipated for a fixed period, such as a fiscal year, rather than the size of the individual purchase order (FPR 1-3.807-12).

D. OEM AND DEALER/DISTRIBUTOR DISCOUNTS

1. An integral part of the price analysis is the consideration given to OEMs and dealers in the establishment of the Government's negotiation position. While the government's goal in negotiating schedule discounts is to obtain an offeror's most favored customer discount other than the OEM or dealer discount, it is none-the-less necessary for the Government to assure itself that these entities are performing OEM or dealer functions. Accordingly, appropriate information will be obtained from the offeror where an offeror sells to OEMs or dealers.

2. An offeror will be required to furnish information on its dealer/distributor pricing or discount arrangements regardless of whether these entities will participate under the schedule contract. Information will be obtained on the functions that the dealer/distributor performs and which of these functions will be performed under the schedule contract. Where a dealer performs a significant number of functions for the offeror, the Government's negotiation objective will be other than the offeror's dealer/distributor price or discount.

3. Where an offeror sells the same or similar products or services to an OEM that are offered to the Government under the MAS solicitation, the offeror will be required to furnish information on its OEM pricing or discount arrangements. Where an offeror sells to an OEM and claims that there is considerable difference between the item sold to the OEM and the item sold through the MAS contract, the offeror will be given the opportunity to demonstrate such differences. If the differences can be substantiated, the Government's negotiation position will be other than the offeror's OEM price or discount.

V. Negotiations.

1. Negotiations can begin upon completion of a properly prepared price analysis and establishment of the Government's negotiation objectives.

2. During the negotiations, Government negotiators will address the following:

a. Aggregate discounts based on the estimated volume of sales under the schedule contract giving consideration to the Government's manner of ordering.

b. In FSS, the use of an economic price adjustment clause considering the uncertainty of prices for the contract term and the resultant improved discounts offered the Government by the offeror for this price protection. The use of the EPA clause is a matter for negotiation.

3. In the event that the Government's negotiation objective cannot be met, the contracting officer must exercise judgment in deciding whether to reject the offer. In exercising this judgment, the contracting officer must weigh the effect that the rejection of the offer will have on meeting the Government's needs. Whenever a decision is made to award an MAS contract where the Government's discount is not equal to or better than the MFC discount, the contracting officer will:

a. Ensure the analysis and reasons for this decision are fully documented and justified in the contract file.

b. Obtain approval for such a decision at a supervisory level higher than the contracting officer, regardless of the dollar value.

4. The Government will not award an MAS contract to a firm that does not give us a price equal to the best price given or available to its volume end user customers under similar circumstances except where the Government's overall volume of purchases for the contract period does not warrant the best price given to end user customers.

5. At the conclusion of negotiations, the contracting officer will decide on the level of the MOL in the contract. The level of the MOL depends on the Government's negotiated discount arrangement and the estimate of sales volume above which suppliers are likely to quote lower price in other types of contracts.

6. In all MAS contract negotiations, the contracting officer is required to make an affirmative determination that the prices negotiated are fair and reasonable (FPR 1-3.807.2).

7. FPR 1-3.811 require that a price negotiation memorandum (PNM) be prepared at the conclusion of each negotiation. The PNM is the document that brings together all the principal elements of the negotiation leading to the decision the price/discount is fair and reasonable. In support of that decision, the PNM should contain the significant considerations shaping the pricing/discount arrangement. These include:

a. A summary of the offer received (prices, terms, etc.), the Government's negotiation position (objectives) and the negotiation results. Any revised or adjusted offers and any reversed or adjusted Government negotiation objectives will be explained.

b. Names and titles (position) of the Government and contractor representatives who participated in the negotiations.

c. Reference to the price analysis report should be made or, where appropriate, actual incorporation of the price analysis. (Elements of the price analysis report are in Section II, paragraph C of this pricing guide).

d. Where cost or pricing data is required, the narrative should cover the products or services that require it, the source of the data, the analysis of the data and its use in negotiations. Where the requirement for cost or pricing data is waived, the determination and findings in support of such waiver will be appended to the PNM.

e. Where preaward audit or other pricing assistance is available, the PNM should identify the recommendations. Where the recommendations are not used, appropriate rationale will be included on why they were not used. Any alternate position will be documented and supported with factual data.

f. Any exceptions to the Government's terms and conditions will be documented as will any special or non-standard contract provision.

g. The PNM will document the initial negotiation objectives and actual negotiations including the offers and counter-offers made by the parties with supporting rationale for all Government positions.

h. The document will include the MOL level established with supporting rationale.

i. The document must clearly demonstrate and support that the price/discount negotiated : reasonable. It must document any decision to accept less than the best pricing arrangement granted to the most favored customer. The PNM should also identify the offeror's data used in the negotiation process.

j. The PNM should be signed and dated by the contracting officer as evidence that it is the official record of negotiations and it complies with GSA policies and procedures.

Price Analysis

CHECK SHEET

		Yes	No
1.	Did the offeror submit adequate data in response to the solicitation?		
2.	If data submitted by offeror was not adequate, did you request that deficiencies be corrected?		
3.	Did offeror then submit adequate data?		
4.	Did you verify that the items meet the test of:		
	a. Established catalog price (FPR 1-3.807-1(b)-(2)(ii)(A)?		
	b. Commercial item (FPR 1-3.807-1(b)(2)(ii)(B))?		
	c. General public (FPR 1-3.807-1(b)(2)(ii)(D))?		
	d. Substantial quantities (FPR 1-3.807-1(b)(2)-(ii)(c) and ASPM No. 1 Chapter 8A)?		
5.	Did you prepare a price analysis on the offerors proposal?		
6.	Did you compare the offerors prices/discounts to existing or prior contracts and reconcile differences?		
7.	Did you compare proposed pricelists to prior lists and evaluate changes?		
8.	Did the offeror propose the MFC discount to the Government?		
9.	If MFC discount was not offered, did the offeror's proposal provide the required documentation in support thereof?		
10.	If MFC discount was not offered, did you evaluate why and use it in developing the Government's negotiation position?		
11.	On a sample basis, did you compare "net prices" on high dollar volume items to similar items offered or available from other sources?		

Yes No

12. Are the prices negotiated at least equal to the best price that the offeror grants to its end user most favored customer?

13. Does the PNM contain an affirmative determination that the prices negotiated are fair and reasonable and set forth the basis for such determination?

Solicitation No. ______________

DISCOUNT SCHEDULE & MARKETING DATA

INSTRUCTIONS TO OFFERORS:

PART A. General Information, applies to each GSA Special Item Number (SIN) for which an offer is submitted. (If all information is the same, SINs may be combined.)

Part B. Separate discount and sales information, must be completed for each Special Item Number for which an offer is submitted. (If discount information is the same for all products under each SIN, SINs may be combined. However, separate sales information required under Part B IV must be provided for each SIN.)

Information required by each space must be furnished. If not applicable, indicate by "N/A". Information furnished in Part B relating to discounts, allowances and sales information will be treated as "CONFIDENTIAL" by the Government except for final prices and discounts awarded by the Government. Failure to provide current, accurate and complete information under Parts A and B may subject the offeror to liability for refunds pursuant to the price reductions or Defective Pricing Clauses.

PART A - GENERAL INFORMATION
(applicable to all special item numbers)

I. OFFEROR'S MARKETING CATEGORY (check applicable item)

(a) ________ Manufacturer selling direct – has no dealers.

(b) ________ Manufacturer selling direct to the Government even though he has dealers.

(c) ________ Manufacturer selling to the Government through dealers.

(d) ________ Dealer selling direct to the Government. (Dealer must submit manufacturer's price list).

(e) ________ Other (specify) ______________________________

____

II. IDENTIFICATION OF A PRICELIST AS THE BASIS FOR THIS OFFER
(check and attach ________ copies of the pricelist)

(a) ________ Manufacturer's catalog/pricelist ______________________
(indicate type)

(b) ________ Dealer's catalog/pricelist

(c) ________ Retailer's catalog/pricelist

(d) ________ Other (specify) ______________________________

____

Solicitation No. ________________

PART A – continued

III. WARRANTY: (Question (b) applies only to FSS solicitations):

(a) Submit your standard commercial warranty or specify where it may be found in your catalog or pricelist included with this offer.

(b) The warranty offered to GSA is more favorable ________ less favorable __________ or equal to __________ the commercial warranty? (check one). Describe and provide the value (expressed as a percentage of the catalog price) if more favorable or less favorable ____________ %.

IV. INSTALLATION AND INSTRUCTION (This section only applies to FSS).

(a) Are installation and instruction included in this offer?
Yes ____, No _____ (check one).

If Yes, give details or indicate where the information may be found in your catalog or pricelist.

(b) Are installation and instruction provisions offered herein to the Government more favorable than those in commercial customers? Yes _____, No _________ (check one). If Yes, describe and provide the value (expressed as a percentage) ____%.

V. OTHER DATA: (In FSS solicitations, answer "Yes" or "No" for each question).

(a) ________ Do you maintain stock on hand of the items offered?

(b) ________ Do you display the Special Item Number(s) offered in showroom?

(c) ________ Do you provide any design and layout assistance related to this Special Item Number free of charge?

(d) ________ If you are a dealer, will you arrange to have other dealers participate in the schedule contract should you receive a contract?

(e) ________ Will you administer all incoming orders, including requests for expediting and follow-up?

END OF PART A

Solicitation No. ______________

PART B - DISCOUNT AND SALES INFORMATION

Name of Offeror	GSA Special Item Number

I. IDENTIFICATION OF ITEMS OFFERED. How many Model/type of catalog items do you offer under this GSA Special Item Number ______ (enter number).

II. DISCOUNTS. The following concessions are offered to the Government for delivery FOB destination. In ADTS solicitations, list also concessions to the Government for delivery FOB origin.

(a) Discount offered on the above GSA Special Item Number is ________ % from pricelist dated ______________ , plus prompt payment discount, as stated on the first page of this solicitation (additional details may be entered below or attached). If discounts vary, show discounts on pricelist.

(b) Aggregate or end of contract additional discounts. An additional discount of __________ percent is offered to the Government which will be applied to the actual aggregate sales in excess of the following base figure under this contract:

1. For current MAS contractors, aggregate sales (annualized) to the Government for most recent 12 month period under similar contract(s) is $ _______, based on sales during the period ______ to ______.

2. For other offerors, projected aggregate sales under this contract is $ ___________.

Solicitation No. ________________

(c) Quantity Discounts. List below any quantity discounts included in this offer. Question (2) below applies only to FSS.

(1) Can models/products be combined within Special Item Number?
Yes______ No _______. If yes, provide details.

(2) Can Special Item Numbers be combined?
Yes______ No _______. If yes, provide details.

(d) Other beneficial terms, discounts, or concessions included in this offer such as prompt renewal discounts, purchase option credits, etc. (List below and provide detail explanations.) (This section applies only to FSS solicitations).

Solicitation No. ________

III a. List below the best discount and/or concessions resulting in the lowest net price (regardless of quantity and terms and conditions) to other than authorized GSA contract users from pricelist for the same or similar products or services offered to the Government under this solicitation. (Show actual percentage and delivery terms)

	Regular Discounts (%)	Quantity Discounts (%)	Aggregate Discounts	Commissions to other than employees (%)	Prompt Payment	FOB Point	Other
(1) to dealers/ retailers	________	________	________	________	________	________	________
(2) to distributors/ wholesalers	________	________	________	________	________	________	________
(3) to educational institutions	________	________	________	________	________	________	________
(4) to state, county, city, and local governments	________	________	________	________	________	________	________
(5) to original equipment manufacturers (OEM)	________	________	________	________	________	________	________
(6) to others (specify); e.g., nat'l accts., sales agreements, etc.	________	________	________	________	________	________	________
(7) If a dealer, indicate discount from mfg's pricelist	________	________	________	________	________	________	________

III c. Do you have in effect, for any customer of any class within the MOL or outside of the MOL, other discounts and/or concessions including but not limited to the following, regardless of pricelist, which result in lower net prices than those offered the Government in this offer?

Yes____ No______ rebates of any kind, including year-end or end of contract discounts?

Yes____ No______ multiple quantity unit pricing plan?

Yes____ No______ cumulative discounts of any type which cover items being offered?

Yes____ No______ products (models)/services that may be combined for maximum discounts?

Yes____ No______ others (specify).

If answer to any of the above is "Yes", provide detailed explanation including the value expressed as a percentage of the list price.

Solicitation No. ________________

SPECIAL ITEM NO. ________

PART B - continued

IV (a) Are any of the models/products offered herein sold by the offeror under a different trade name(s)? Yes _____ , No ______ . If "Yes", explain and provide applicable pricelists.

(b) To your knowledge, are there identical products offered herein contained in any other GSA Federal Supply Schedule contract? Yes _____ , No ______ . If "Yes", identify the product, schedule and contract.

(c) Summarize any significant changes in concessions offered herein as compared with those set forth in any current GSA contract.

V. Allowances: (This section only applies to FSS solicitations). Do you offer any of the following allowances to any customer which are not available to a GSA contract user under this contract? (Enter "yes" or "No" for each. If yes, explain.)

(a)_______Trade-in allowances?

(b)_______Return/Exchange goods policy?

(c)_______Reduced prices on samples, demonstrator models, reconditioned items or floor models?

(d)_______Do you give any allowances not mentioned above?

Solicitation No. __________

SPECIAL ITEM NO. __________

PART B – continued

VI. SALES INFORMATION (This section only applies to FSS solicitations).

Estimate the percentage of your sales made to the U.S. Government under Federal Supply Schedule Blanket Purchase Arrangements (check one of the following):

None ______ . 25% or less ______ . 25% to 49% ______ .

50% to 74% ______ . 75% or more ______ .

List agencies below:

1. __________
2. __________
3. __________
4. __________

etc.

Solicitation No. ______ Special Item No. ______ Offeror Name ______

VII.

A. This section requires (1) that sales information be provided to enable the contracting officer to determine that the items meet the test of commerciality in FPR 1-3.807-1 and ASPM No. 1, Chapter 8A; and, (2) that pricing data is furnished in sufficient detail to enable the contracting officer to perform a price analysis in accordance with FPR 1-3.807-1(b)(2)(iv).

B. The offeror certifies that, except for the individual models/types or catalog numbers cited in paragraph C below, all other models/types or catalog numbers offered in response to this solicitation meet the tests of commerciality in FPR 1-3.807-1 and ASPM No. 1, Chapter 8A. Of the individual models/types or catalog numbers so certified, sales information shall be provided in the table below for each of the _____ models/types or catalog numbers with the largest dollar sales volume. The sales information provided is ______ for the prior 12 months, from ____ to ____ for this special item number.

1. Total annual sales to the Government under this special item number $________.
2. Total annual sales (to all entities) under this special item number $________.

1	2		3	4		5	6		7		8
Model/Type or catalog no	Total annual sales to Fed Govt.		Total annual sales to nongovernment customers at catalog price (less published discounts).	Total annual sales to nongovernment customers at other than catalog price.		Total annual sales: Columns 2, 3, and 4.	Provide information below for largest discount granted to any nongovernment customer		List the largest discount at which the item was sold for comparable sales/quantities shown in column 2 to any nongovernment customer during the past year.		Is the discount in block number 6 greater than your current offer under this solicitation? Yes ______ No. ____. If yes, provide complete documentation and rationale of the difference. Merely submitting copies of documents such as terms and conditions of commercial contracts, commercial warranties, etc., will not be adequate to justify the difference.
	$	% of column 5		$	% of column 3 if more than 25%		Qty	Discount	Qty	Discount	

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VII. - contd. -

C. Sales information in the table below shall be provided for each individual model/type or catalog number in the above special item number that is not certified commercial when experienced annual government sales are $100,000 or more.

1	2		3	4		5	6		7		8
Model/Type or catalog no	Total annual sales to Fed. Govt.		Total annual sales to nongovernment customers at catalog price (less published discounts).	Total annual sales to nongovernment customers at other than catalog price.		Total annual sales: Columns 2, 3, and 4.	Provide information below for largest discount granted to any nongovernment customer		List the largest discount at which the item was sold for comparable sales/quantities shown in column 2 to any nongovernment customer during the past year.		Is the discount in block number 6 greater than your current offer under this solicitation? Yes ______ No ______. If yes, provide complete documentation and rationale of the difference. Merely submitting copies of documents such as terms and conditions of commercial contracts, commercial warranties, etc., will not be adequate to justify the difference.
	$	% of column 5		$	% of column 3 if more than 25%		Qty	Discount	Qty	Discount	

Note: 1. Federal Government sales include all sales to U.S. Government and its instrumentalities and for U.S. Government use, sales directly to U.S. Government prime contractors and to their subcontractors or suppliers at any time, for use as an end item or as part of an end item, by the U.S. Government.

2. Nongovernment customer is defined as other than Government or affiliates (include sales to distributors, dealers, OEM, national accounts, educational institutions, state, etc.).

3. Discounts are reductions to catalog or market prices (published or unpublished) applicable to any customer, including OEMs, dealers, distributors, national accounts, states, etc.; and any other form of price reduction such as concessions, rebates, quantity discounts, allowances, services, warranties, installation, free parts, etc., which are granted to any customer.

General Services Administration
Federal Supply Service
Washington, DC 20406

APR 12 1988

MEMORANDUM FOR DISTRIBUTION LIST - ALL FSS PROCURING ACTIVITIES (FCP DISTRIBUTION LIST)

FROM: NICHOLAS M. ECONOMOU, CPPO
ACTING DIRECTOR
OPERATIONS MANAGEMENT DIVISION (FCO)

SUBJECT: PROCUREMENT INFORMATION BULLETIN 88-7

DOCUMENTATION OF FILES

A procurement management review was conducted recently on FSS, Central Office, by the Office of Acquisition Policy (V). There were several areas covered by the resulting report, however, one in particular needs to be addressed because all of the Commodity Centers could use some improvement. The area is documentation of files.

Good documentation is essential to procurement cases. It is a record of how and why the contracting officer conducted the procurement process. A file is well documented if it can demonstrate to all future readers the issues, analyses, actions and determinations which led to the actual contract.

All commodity centers need to document their files better. The Office of Acquisition Policy reported that in some cases, documents which have pertinent functions were omitted from the contract cases. Examples of documents omitted included: the Procurement Request; Procurement Plan; Synopsis; Legal Review Comments; Financial Responsibility Reports; Delegation of Authority for Contract Administration; and GSA Form 3503, Certifications and Representations.

Generally, the following areas need improvement in documentation:

1. PRICE NEGOTIATION MEMORANDUM (PNM). The PNM should adequately detail the discussions which have taken place during negotiation. It should address best and final offers and the reasons for not considering certain offers. The PNM should summarize the areas discussed during the negotiations and show the basis for determination of fair and reasonable price.

2. STANDARD FORM 26. When the SF 26 is used, it is considered the award document, and it becomes the first page of the contract. It is used when an offer leads to further changes (i.e., inclusion of subcontracting plan, change in price from initial offer, etc.). If, the prospective contractor amends its offer in writing to reflect any changes, the letter or telegram used in this change should be incorporated on the SF 26.

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3. ESTABLISHING NEGOTIATION OBJECTIVES. Numerous cases were found during the review where the rationale to support the negotiation objective was either not clear or not adequately documented. The rationale is usually developed in the price analysis which must consider not only the offered prices, but also other information which could support a reasonable price. Negotiation objectives are not intended to justify low prices, but are rather used to develope a price range. The price range provides for the flexibility necessary for any ensuing negotiations. The objectives should never be a result of an arbitrary decision. It should be supported by sound rationale and documented in the price analysis.

4. INFORMATION SUPPORTING THE RESPONSIBILITY DETERMINATION. "Responsibility" involves the question of whether the contractor can and will perform as it promised. In order to determine this, information available up to the time of award should be evaluated. Although it may be in the form of Financial or Plant Facility Reports, other information (i.e., ACO reports, memoranda regarding known circumstances, etc.) can be used as documentation for support of the determination of responsibility.

5. CONTRACT CLEARANCE WAIVERS. Contract files for procurements which meet the dollar value threshold for pre-award contract reviews but have the review waived must contain a copy of the memorandum indicating that a waiver has been granted. Instructional Letter FSS-IL-87-11, dated November 11, 1987, provides information on procedures for requests for such waivers.

6. PRE-AWARD AND POST-AWARD SYNOPSIS. Awards exceeding $25,000 that are likely to result in the award of subcontracts are required to be synopsized in the CBD. Smaller dollar amounts can also be publicized if it is advantageous to industry or the Government.

Notices of proposed contract actions expected to exceed $25,000 or $10,000 if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors are required to be synopsized in the CBD. Contracting officers should ensure that the synopsis in the Commerce Business Daily contains accurate information on the proposed procurement. Failure to accurately represent the Government's requirements could affect a firm's decision to make an offer. For more information on synopsizing see FAR Part 5.

7. SUBCONTRACTING PLANS: When a small business subcontracting plan is required, contracting personnel should ensure (1) subcontracting plans comply with FAR clause 52.219-9; (2) the contract document incorporates the approved subcontracting plan; (3) the approved plan be made a part of the contract document sent to the contractor; and (4) where a previously approved corporate plan is incorporated by reference, the GSA Form 1535, should state where the approved plan is on file if a copy is not in the contract file; (5) a subcontracting reports letter be provided to the contractor at the time of award; (6) the PCO (or ACO if the contract is delegated) monitor receipt of the required forms either in the contract file or maintain a central file of subcontract reports. Where contract administration is delegated, the ACO will provide information to the PCO on a contractor's performance in submitting the required reports.

Keep in mind that the records that we keep become part of the continuous account of the decisions that determine the way a commodity is bought. Our records provide a history for the future.